



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORETSUCCESSION

CAUSE NO. 68 'A' OF 2001

IN THE MATTER OF THE ESTATE OF THE LATE **PATRICK KIPKOECH SAMOEI**

1. **MARY SAMOEI**
2. **CHRISTINE ASIS**
3. **JOSEPH KOEC**

4. **PAULINE**

JEPSAT PETITIONERS

JUDGMENT

The Petitioner, **Christine Asis, Mary Samoei, Pauline Jepsaat** and **Joseph K. Koech** filed this cause on 27th March, 2008 seeking a grant of representation of the estate of **Patrick Kipkoech Samoei** (deceased). A grant of Letters of Administration Intestate was issued to them on 17th October, 2001.

On 19th June, 2006, the said grant was confirmed. The assets of the estate were distributed as follows:-

- (a) Parcel of Land at Lessos settlement Scheme No. 28: Each widow was to have half (1/2) share to hold on behalf of members of her house.
- (b) Shares in Mogobich Tea Estate: Each widow received half (1/2) to hold on behalf of members of her house.
- (c) Heads of Cattle: To be shared equally between the houses.
- (d) Tractor registration No. KZL 585: To be managed by the widows and proceeds be shared equally.

One would have expected the matter to rest after the grant was confirmed. That was not to be. On 4th October, 2006, M/s **Kitur & co.** Advocates lodged an application for annulment of the confirmed grant on the grounds that new facts had emerged. On 30th March, 2007, Ibrahim J, as he then was annulled the Certificate of Confirmation. On the same 30th March, 2007, a Consent Order was recorded before the same judge in the following terms:-

- 1). The parties maintain the status quo pertaining to day on without prejudice basis. This is that each house occupies and utilizes 50% of the immovable assets of the Estate pending the distribution and further orders of this Court.
- 2). The parties are granted leave to file one affidavit respectively to set out their proposals and views on distribution within 21 days.
- 3). The hearing as to distribution shall take place on 21st May, 2007 at 9.00 a.m.

The two widows **Mary Samoei** and **Pauline Chepsaat Samoei** then duly filed separate affidavits as to distribution. A hearing as to distribution however, never took place. Counsel for **Pauline Chepsaat**

Samoei then listed the cause for hearing on 23rd May,2011. Come that date, only the said counsel attended. On being satisfied that counsel for the **Mary Samoei** had been served with a hearing notice, I allowed counsel for **Pauline Chepsaat Samoei** to proceed with the cause. She then asked me to determine the distribution on the basis of the two affidavits filed by both widows.

Having perused the record and the two affidavits, the following has emerged. The two widows are in agreement in respect of certain issues: There is no dispute that the deceased died intestate and that he was survived by the two widows and the following children.

- (1) Christine Asis
- (2) Joseph Kipkemboi Koech
- (3) Philomena Kalele
- (4) Monica Samoei
- (5) Mark Koech
- (6) Jematia Samoei
- (7) Peter Kibet
- (8) Roselyne Jepchirchir
- (9) Philip Kiplimo
- (10) Emmanuel Kipkoge
- (11) Peris Jerotich
- (12) Carolyne Chemurgor
- (13) Consolata Jepkosgei
- (14) Japheth Kimeli
- (15) Felix Kipyego
- (16) Walter Kibitok and
- (17) Brian Kiprono

There is also no dispute that the deceased had at the time of his demise, the following assets:-

- 1). Land at Mogobich Tea Estate L.R. NO. 1482/4 measuring approximately 220 acres;
- 2). Land at Lessos Kaben Settlement Scheme Plot NO. 28
- 3). Motor Tractor Reg. No. KZL 585
- 4). A Plantation of mature trees.

The widows also agree that the deceased had given 40 acres of his land at Mogobich Tea Estate to the following:-

(1)	Cheruiyot Sang	10 acres
(2)	Kibiwott Ngososei	5 acres
(3)	Barnaba Kogo	5 acres
(4)	Philip Kiyeng	3 acres
(5)	Jemaiyo Lelgut	2 acres
(6)	Simeon Ngososei	5 acres
(7)	Mary Samoei	2 ½ acres
(8)	Pauline Jepsaat	2 ½ acres

There is also agreement that the deceased had sold 20 acres of his land at Mogobich Tea Estate to the following:-

- 1). Philemon Kipkotum 10 acres
- 2). Solomon Cheruiyot Serem 3 acres

- 3). Barnaba Kiprop Ruto 2.8 acres
- 4). David Birgen 2 acres
- 5). James Kiplagat Chuma 0.8 acres
- 6). William Tuwei 0.4 acres
- 7). Clement Tuwei 0.5 acres and
- 8). David K. Saina 0.5 acres

With respect to Tractor Registration No. KZL 585 and its accessories, the widows agree that the same are in poor repair and should be sold and the proceeds therefrom be shared equally between them.

With respect to the plantation of eucalyptus trees, **Pauline Chepsaat Samoei** has sworn that the same were cut down and sold by **Mary Samoei's** house whereas the latter swears that the plantation is still in place. There is however, no dispute as to how the same is to be shared. The widows agree that it should be shared equally.

Mary Samoei has proposed that all children of the deceased as listed above share equally the remaining portion of Land at Mogobich Tea Estate. **Pauline Chepsaat Samoei** has however not given here proposal with respect to that remaining land. In the premises, I accept the proposal made by **Mary Samoei** in respect of the same as fair.

There is also no dispute as to how the costs to be incurred by the estate should be shared. **Mary Samoei** mentions costs of winding up cause No. 2 of 1992, and Civil Appeal No. 209 of 2002. She also mentions Survey costs and proposes that all costs be shared equally between both houses. **Pauline Chesaat Samoei** on her part, while agreeing that survey costs be met by both houses, does not mention costs of the winding up cause and the civil appeal. I agree with **Mary Samoei** that all costs by and against the estate be shared equally between the houses.

There is however a dispute as to how plot No. 28 at Lessos Keben Settlement Scheme should be shared. **Mary Samoei** has sworn that she has been in possession of the same since it was purchased by the deceased and therefore belongs to her house. **Pauline Chepsaat Samoei** on her part proposes, in her affidavit, that the plot should be shared equally between both houses.

Based on the above, I have come to the conclusion that the estate of the deceased be distributed as follows:-

(1) Land at Mogobich Tea Estate LR No. 1482/4 – comprising approximately 220 acres:-

(i) 40 acres thereof be shared as follows:-

- (a) Cheruiyot Sang - 10 acres
- (b) Kibiwott Ngososei - 5 acres
- (c) Barnaba Kogo - 5 acres
- (d) Philiph Kiyeng - 3 acres
- (e) Jemaiyo Lelgut - 2 acres
- (f) Simeon Ngososei - 5 acres
- (g) Mary Samoei - 2 ½ acres
- (h) Pauline Jepsaat - 2 ½ acres
- (ii) 20 acres thereof be shared as follows:-
 - (i) Philemon Kipkolum - 10 acres
 - (ii) Solomon Cheruiyot - 3 acres
 - (iii) Barnabas Kiprop Ruto - 2.8 acres
 - (iv) David Birgen - 2 acres
 - (v) James Kiplagat Chuma - 0.8 of an acre
 - (vi) William Birgen - 0.4 of an acre
 - (vii) Clement Tuwei - 0.5 of an acre
 - (viii) David K. Saina - 0.5 of an acre

(iii) 1 ½ acres of land upon which there is a eucalyptus plantation to be shared equally between **Mary Samoei** and **Pauline Chepsaat Samoei**.

(iv) 10 acres thereof to be vested in **Pauline Chepsaat Samoei** and her house in substitution for her share in Plot No. 28 Lessos Keben Settlement Scheme which is exclusively used by **Mary Samoei** and her house.

(v) The remaining portion of approximately 148.5 acres to be shared equally among the children of the deceased namely:-

- 1). Christine Asis
- 2). Joseph Kipkemoi Koech
- 3). Philomena Kalele
- 4). Monica Samoei
- 5). Jamata Samoei
- 6). Emmanuel Kipkoge
- 7). Carolyne Chemurgor
- 8). Consolata Jepkosgei
- 9). Felix Kipyego
- 10). Walter Kibitok
- 11). Brian Kiprono
- 12). Peter Kibet
- 13). Roselyne Chepchirchir
- 14). Philip Kiplimo
- 15). Peris Jerotich
- 16). Japheth Kimeli
- 17). Mark Koech

(2) Plot No. 28 at Lessos Keben Settlement Scheme comprising about 20 acres to be vested in **Mary Samoei** and her house as they are in conclusive possession thereof.

(3) Motor Tractor Reg. Number KZL 585 and its accessories to be sold and proceeds therefrom be shared equally by **Mary Samoei** and **Pauline Chepsaat Samoei**.

(4) The following costs be shared equally between the houses:

- (i) Winding up Cause No. 2 of 1992
- (ii) Civil Appeal No. 209 of 2002
- (iii) Survey
- (iv) Any other lawful costs incurred or to be incurred on behalf of the estate.

The grant is therefore confirmed subject to the above mode of distribution of the assets of the estate of the deceased.

Costs to be shared by the two widows.

Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF AUGUST 2011.

F. AZANGALALA
JUDGE

Read in the presence of:-

M/s Sang holding brief for Kipseii for the 4th Petitioner.

F. AZANGALALA
JUDGE
5/8/2011